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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1936.

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No. 330.

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THE UNITED STATES, *Petitioner,*

v.

AUTOMATIC WASHER COMPANY, *Respondent.*

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## RESPONDENT'S PETITION FOR REHEARING.

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JESSE I. MILLER,
*Attorney for Respondent.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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## RESPONDENT'S PETITION FOR REHEARING.

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Because it is believed that the Court has overlooked a fundamental distinction between the principle involved in this case and the two companion cases, this petition is respectfully submitted.

In this case, each stockholder did "nominate and appoint H. E. Nelson and W. N. Gallagher my true and lawful attorneys for me and in *my name, place and stead*" to perform certain acts, as attorneys in fact, among others to

> "receipt for and receive any and all dividends declared of the old company * * * and to sell, exchange or dispose of for me and in my behalf any and/or all property or assets so received * * *". (R. p. 8)

No authority was here conveyed to Nelson to have any stock issued in his own name. His only right was to receive, as attorney in fact, certain new stock in the stockholder's name and to transfer it to the bankers. However, the agreement *between the two companies* provided that the new company should "issue such certificates in such names and for such amounts as shall be specified" by Nelson and Gallagher.

Upon these facts, this Court said, referring to the three companion cases:

> "In each case, the person originally entitled to receive the certificate directed, for his own convenience and purposes, that it be issued in the name of a nominee."

This was true in the *Founders General* and *Leach* cases; in the present case it was not the stockholder, but the old company which authorized the issuance of the stock in Nelson's name. Nonetheless, the Court said (still generalizing as to the three cases that

> "the authorization rendering his (nominee's) holding lawful was received from the taxpayer (here the stockholder). The legality of the issuance of the stock in the names of the nominees rests on the fact that the taxpayers authorized such issuance and granted their nominees the right to receive the stocks entered in their names. The granting of that authority is a transfer of 'the right to receive' within the meaning of the Act." (Parentheses supplied.)

This statement likewise is correct as applied to the *Founders General* and *Leach* cases; in the instant case, the "granting of that authority" did not come from the stockholder, but from the corporation, *whose transfer of its "right to receive" the stock has, without complaint, been taxed.* The decision, as applied to the present case, therefore, imposes a tax upon a *mere power of attorney.*

The Revenue Acts of 1918, 1921 and 1924, while each containing a provision taxing the transfer of "rights to receive" stock, contained a further provision subjecting to a separate tax any

> "power of attorney granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the grantee." (See Title XI, Schedule A (12), Revenue Act of 1918; Title XI, Schedule A (11), Revenue Act of 1921; Title VIII, Schedule A (10), Revenue Act of 1924.)

However, the tax on powers of attorney *was repealed by Section 1200 of the Revenue Act of 1926* and no tax on powers of attorney has since been in effect.

The effect of the generalization in the joint opinion is, therefore, as applied to the instant case, to impose a tax upon a simple power of attorney, the tax on which was specifically repealed in 1926.

WHEREFORE, it is most earnestly urged that the present opinion, so far as it applies to Automatic Washer Company, should be modified and the decision of the Court of Claims affirmed.

Respectfully submitted,

JESSE I. MILLER,
*Attorney for Respondent.*